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18 UNITED STATES DISTRICT COURT

19 DISTRICT OF NEVADA

20 ARISTOCRAT TECHNOLOGIES, INC. and
 21 ARISTOCRAT TECHNOLOGIES
 AUSTRALIA PTY LTD.,

22 Plaintiffs/Counterclaim-Defendants,
 v.

23 LIGHT & WONDER, INC., LNW GAMING,
 24 INC., and SCIPLAY CORPORATION,

25 Defendants/Counterclaim-Plaintiffs.

Case No. 2:24-cv-00382-GMN-MDC

**PLAINTIFFS' MOTION TO ENFORCE
 PRELIMINARY INJUNCTION
 (FILED UNDER SEAL)**

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1 Plaintiffs Aristocrat Technologies, Inc. and Aristocrat Technologies Australia Pty Ltd.
2 (collectively, “Aristocrat”) respectfully submit this motion to enforce the Court’s September 20,
3 2024 preliminary injunction order, ECF No. 125, as clarified by the Court’s September 27, 2024
4 order, ECF No. 136 (together, the “Order”), in light of Defendants Light & Wonder, Inc., LNW
5 Gaming, Inc., and SciPlay Corporation’s (collectively, “L&W”) material noncompliance with
6 multiple requirements of that Order.

7 INTRODUCTION

8 For the first year of this trade secret dispute, L&W vehemently denied any wrongdoing.
9 L&W claimed that it “extensively searched both its electronic files and those of the two employees
10 at Aristocrat’s request in advance of a parallel proceeding in Australia . . . and did not locate any
11 Aristocrat confidential documents or information.” ECF No. 19 at 6. L&W accused Aristocrat of
12 “baselessly leveling trade secret misappropriation claims against the Dragon Train games,” ECF
13 No. 85 at 1—which L&W insisted were “the result of years of independent development,” ECF
14 No. 19 at 7. But Aristocrat showed that these assertions were untrue, and the Court granted
15 Aristocrat’s motion for a preliminary injunction, finding that Aristocrat is “extremely likely” to
16 succeed in demonstrating L&W misappropriated Aristocrat’s trade secrets. ECF No. 125 at 16.

17 Following the Order, L&W’s position has shifted again. Unable to credibly dispute that
18 L&W acquired Aristocrat math information from Emma Charles and used that information—
19 indeed, shortly after issuance of the Order, L&W terminated Ms. Charles—L&W now maintains
20 that the misappropriation was essentially limited to Dragon Train. This assumption appears to have
21 undergirded L&W’s response to the Order, as L&W has made little effort to comply with the
22 Order’s requirements to search for documents reflecting Aristocrat’s trade secrets, and to identify
23 every instance in which L&W has disclosed those trade secrets, *outside the context of Dragon*
24 *Train*. To make matters worse, L&W did not make a reasonable effort to identify which documents
25 and disclosures actually reflect Aristocrat’s trade secrets. Instead, L&W provided an accounting
26 of documents—containing [REDACTED] of entries—that L&W admits includes non-
27 responsive materials (e.g., [REDACTED]), and L&W provided a
28 deficient accounting of disclosures that incorporates by reference the [REDACTED] of

1 entries in L&W’s list of documents, in an impermissible attempt to shift the burden to Aristocrat
2 to identify instances in which L&W disclosed Aristocrat’s trade secrets.

3 L&W’s approach does not comply with the Order. The search, isolation, and accounting
4 requirements of the Order are critical to ensure that L&W does not continue to use and disclose
5 Aristocrat’s trade secrets while the case is pending. They also are important to allow Aristocrat to
6 understand the full extent of L&W’s misappropriation—including the use of Aristocrat’s trade
7 secrets in games other than Dragon Train—and, if necessary, to take additional steps to address
8 the resulting irreparable harm. These requirements are not limited to documents and disclosures
9 related to Dragon Train, nor is there any other basis for L&W to have limited its search almost
10 exclusively to such documents and disclosures. Discovery has already revealed evidence—some
11 of which the Court discussed in its Order—showing that L&W’s misappropriation extended
12 beyond Dragon Train. And given the history of this dispute, Aristocrat cannot—and should not
13 have to—credit L&W’s unsupported assumption that its misappropriation was almost entirely
14 confined to Dragon Train. Nor should Aristocrat have to parse through [REDACTED] of
15 documents that, according to L&W, *may or may not* be responsive to the Court’s order, just to
16 understand where and to what extent L&W has used or disclosed Aristocrat’s trade secrets.

17 L&W’s claim that it spent substantial time and resources in identifying and isolating
18 Dragon Train math documents is not an excuse for its failure to conduct a reasonable search for
19 *non-Dragon Train* documents. This is especially so since the proliferation of Dragon Train
20 documents is the direct consequence of L&W’s aggressive commercialization of Dragon Train
21 *after* Aristocrat put L&W on notice of its concerns. The Court should enforce the preliminary
22 injunction and issue a further order requiring L&W to search for and provide all of the information
23 required by that injunction.

24 BACKGROUND

25 I. Aristocrat Identified Extensive Evidence of Misappropriation, Including in 26 Connection with Games Other Than Dragon Train.

27 In granting Aristocrat’s motion for preliminary injunction, the Court found that Aristocrat
28 was likely to succeed in showing that L&W misappropriated Aristocrat trade secrets. ECF No. 125

1 at 11–16. The Court cited “persuasive evidence that Aristocrat’s Dragon Link trade secrets were
 2 used by L&W in the development of Dragon Train,” *id.* at 12–13, as well as instances of
 3 misappropriation *outside the context of Dragon Train*. These instances include Ms. Charles
 4 sending “a worksheet containing confidential information for the Dragon Link base game, to a
 5 colleague, for a reverse engineering training exercise.” *Id.* at 11. Ms. Charles also shared additional
 6 confidential information about Dragon Link in the body of the email attaching that worksheet. *Id.*
 7 at 12. And, in Teams messages with another L&W employee—who did not work for Ms. Charles’s
 8 game studio (Star Studio)—Ms. Charles shared confidential information regarding Dragon Link’s
 9 Grand Jackpot. *See id.* Those messages [REDACTED].
 10 ECF No. 52-2 at Appx. 213–20.

11 **II. The Requirements of the Preliminary Injunction Order**

12 The Order provides that:

13 L&W is hereby enjoined, pending a final determination on the
 14 merits, from using or disclosing any of Plaintiffs’ trade secrets (as
 15 described in this Order) or other confidential and proprietary
 16 information relating to the mathematical design of Dragon Link and
 17 Lightning Link (“**Plaintiffs’ Trade Secrets**”).
 18 ECF No. 125 at 20 (bold added). The Order also required L&W to:

- 19 A. Search for and identify all documents and materials in its
 20 possession, custody, or control reflecting Plaintiffs’ Trade Secrets;
- 21 B. Provide an accounting that describes with specificity every
 22 document identified in its search, including the (i) title, (ii) date, (iii)
 23 subject or description, (iv) any sender or recipient, (v) location
 24 where found, and (vi) any attachments;
- 25 C. Isolate all documents and materials identified in its search so that
 26 they cannot be used, accessed, transferred, copied, disseminated,
 27 modified, or destroyed (including, if necessary, via suspension of
 28 any automated deletion processes and retrieval of any company
 devices issued to employees); [and]
- 29 D. Provide an accounting to Aristocrat’s counsel in this case that
 30 describes with specificity every instance in which L&W has
 31 disclosed Plaintiffs’ Trade Secrets, including the (i) name of the
 32 person or entity to which the information was disclosed, (ii) date of
 33 disclosure, (iii) specific information disclosed, (iv) reason for

1 disclosure, and (v) all documents or materials reflecting the
 2 disclosure.

3 *Id.* at 20–21.

4 L&W was required to “file a certificate of compliance with the Order’s requirements . . .
 5 by Wednesday, October 23, 2024,” ECF No. 136 at 2, except that L&W requested and received an
 6 extension of time until November 6, 2024, to “[s]earch for and identify all documents and materials
 7 in its possession, custody, or control reflecting Plaintiffs’ Trade Secrets,” and to “[i]solated all
 8 documents and materials identified in its search,” ECF No. 152.

9 **III. L&W’s October 23 Certification and Accountings**

10 On October 23, 2024, L&W filed its first certification of compliance, relying on two
 11 employee declarations (from Kevin Kealy and Siobhan Lane), and L&W served partial
 12 accountings of documents and disclosures identified as of that date. ECF No. 154. Both the
 13 certification and the accountings suggested that L&W had focused primarily on identifying Dragon
 14 Train documents and disclosures of such documents.

15 Mr. Kealy’s declaration stated that L&W had “substantially completed an extensive search
 16 for all documents potentially reflecting Plaintiffs’ Alleged Trade Secrets,” ECF No. 154-2, ¶ 8,
 17 and taken steps to ensure that its “personnel do not have any access to *Dragon Train game math*
 18 *documentation.*” *Id.*, ¶ 7 (italics added). But the criteria for that search were limited to terms
 19 associated solely with Dragon Train, plus the terms “Dragon Link,” “Lightning Link,” and
 20 “Golden Century” (one of many titles within the Dragon Link family of games). *See id.*, ¶ 10.
 21 L&W did not use any other terms—not even the names of Dragon Link or Lightning Link titles
 22 other than Golden Century or the abbreviations (*e.g.*, “DL”) that L&W employees sometimes use
 23 to describe these games—to search for information constituting Plaintiffs’ Trade Secrets outside
 24 of the Dragon Train game math. *See Declaration of Peter Swanson (“Swanson Decl.”), Ex. A at 1.*

25 Mr. Kealy also stated that “L&W canvassed all potentially relevant employees worldwide
 26 to evaluate whether they may have, or know the locations of, materials potentially responsive to
 27 the injunction.” ECF No. 154-2, ¶ 14. In the course of the parties’ meet-and-confers, however,
 28 L&W revealed that this canvassing was implemented via [REDACTED]

1 [REDACTED]
 2 [REDACTED].
 3 Swanson Decl. Ex. B at 2. [REDACTED]

4 [REDACTED]. *Id.* at 3. Nothing [REDACTED] asked employees about
 5 any of Plaintiffs' Trade Secrets being accessible, disclosed, or used outside the context of Dragon
 6 Train. Moreover, it is not clear that this canvassing effort included any follow-up investigation
 7 with Ms. Charles, whom L&W terminated within days of the Court issuing the Order,¹ even though
 8 such follow-up would have been an obvious next step to determine the extent of the
 9 misappropriation and to ensure L&W's compliance with the Order.²

10 Ms. Lane's declaration followed a similar pattern. That declaration stated that "L&W has
 11 stopped all development work on current or future Dragon Train games using *the existing Dragon*
 12 *Train mathematical designs*" and that L&W's "new game concepts will not use any *Dragon Train*
 13 *math documentation.*" ECF No. 154-1, ¶¶ 5–6 (italics added). Ms. Lane did not, however, attest
 14 that L&W had ceased use of Plaintiffs' Trade Secrets in any other form.³ Importantly, neither
 15 Ms. Lane nor Mr. Kealy averred that L&W's use and disclosure of Plaintiffs' Trade Secrets had
 16 been limited to Dragon Train, and, as discussed above, the limited evidence L&W has provided to
 17 date shows that the misappropriation is not so confined.

18 L&W's October 23, 2024 accounting of instances in which it disclosed Plaintiffs' Trade
 19 Secrets was likewise limited. Every disclosure listed in the accounting [REDACTED],
 20

21
 22 ¹ See Statement of Matt Wilson, L&W President and CEO, available at
 23 <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000750004/8e60ac80-6bb9-4dfa-9300-bae0981bdaf.pdf>.

24 ² L&W's counsel has indicated that [REDACTED]

25 [REDACTED] See Swanson Decl. Ex. C at 1–2.

26 ³ Similarly, Ms. Lane's declaration stated that "[g]ame developers working on the mathematical
 27 design for [a Dragon Train successor] did not work on the mathematical design or development of
 28 any *Dragon Train games*, and were not exposed to, and did not access, any *Dragon Train game*
math documentation," ECF No. 154-1, ¶ 6 (italics added), but did not attest that these game
 developers had not been exposed to Plaintiffs' Trade Secrets in any other form.

1 except for the disclosures of confidential Dragon Link game math by Ms. Charles that were
2 addressed in the preliminary injunction motion. *See* Swanson Decl. Ex. D (LNW_029459).

3 L&W also stated that “potentially responsive disclosures may be identified” by referencing
4 information provided in its accounting of *documents* reflecting Plaintiffs’ Trade Secrets. *See id.*
5 Exs. J (L&W’s Oct. 23, 2024 accounting, cover pleading, p. 3), F at 2–3. That accounting,
6 however, encompassed [REDACTED] of documents, including many that appear facially non-
7 responsive to the Order (e.g., [REDACTED]), making it infeasible to
8 identify which documents truly reflect Plaintiffs’ Trade Secrets. *See, e.g., id.* Exs. G
9 (LNW_009773), H (LNW_000410), I (LNW_009774). Moreover, this accounting did not comply
10 with other aspects of the Order, as it did not include descriptions of the specific information
11 disclosed and the reason for disclosure of Plaintiffs’ Trade Secrets, as the Order requires for the
12 accounting of disclosures. *See* ECF No. 125 at 21.

13 Notably, L&W did not disclose any instances in which L&W personnel accessed Plaintiffs’
14 Trade Secrets, including Dragon Train math documentation, outside of disclosures by emails or
15 other messages. The accounting also did not list any instances in which L&W may have verbally
16 disclosed Plaintiffs’ Trade Secrets, nor did L&W identify any steps it had taken to search for such
17 disclosures. In a subsequent communication, L&W claimed not to be aware of a single instance in
18 which Ms. Charles or anyone else verbally disclosed any of the trade secrets. *See* Swanson Decl.
19 Ex. K at 3. Moreover, even though the accounting identified [REDACTED] that
20 contained documents reflecting Aristocrat’s trade secrets, L&W did not identify individuals who
21 accessed the information stored [REDACTED].

22 On October 25, 2024, counsel for Aristocrat contacted counsel for L&W and explained
23 Aristocrat’s significant concerns over the apparent deficiencies in L&W’s compliance with the
24 Order. Swanson Decl. Ex. L at 1. In its response to that letter and the parties’ subsequent meet-
25 and-confer discussions, L&W generally asserted in conclusory terms that it had complied with the
26 Order but provided no information indicating that L&W’s compliance efforts had extended
27 significantly beyond Dragon Train. *Id.* Ex. K at 1–3. Indeed, L&W referred back to the declarations
28 it had submitted and argued that there was “[n]o basis” to search for Plaintiffs’ Trade Secrets with

1 any non-Dragon Train terms besides “Dragon Link,” “Lightning Link,” and “Golden Century.”

2 *Id.* at 2.

3 IV. L&W’s November 6 Certification

4 On November 6, 2024, L&W filed its supplemental certification of compliance, relying on
 5 further declarations from Ms. Lane and Mr. Kealy, as well as a new declaration from James
 6 Vaughn, a consultant retained by L&W. ECF No. 155. L&W’s supplemental certification and
 7 declarations still failed to explain what, if anything, it had done to search and account for instances
 8 where L&W possessed, used, or disclosed Plaintiffs’ Trade Secrets outside of Dragon Train
 9 documents and explicit references to Dragon Link, Lightning Link, and Golden Century.

10 L&W also provided a supplemental accounting of documents on November 6. While that
 11 supplement somewhat narrowed the list of documents identified in L&W’s initial accounting, it
 12 also added [REDACTED] of new entries, again including many that appeared facially non-
 13 responsive to the Order. Swanson Decl. Ex. F at 2 (confirming that L&W included [REDACTED]
 14 [REDACTED] in its supplemental
 15 accounting). L&W did not update its accounting of disclosures except to reiterate that potentially
 16 responsive disclosures may be identified by refencing information provided in L&W’s (now
 17 exponentially expanded) accounting of documents.⁴

18 After receiving the November 6 supplemental accounting, counsel for Aristocrat again
 19 reached out to counsel for L&W and reiterated Aristocrat’s concerns about L&W’s deficient
 20 compliance. *Id.* Ex. M at 1–2. In response, L&W generally repeated its previous arguments that
 21 its compliance efforts were sufficient without providing material new information about what
 22 more, if anything, L&W had done to identify non-Dragon Train documents reflecting Plaintiffs’
 23 Trade Secrets.⁵ *Id.* Ex. F at 1–4. L&W also refused to correct its accounting of disclosures. *Id.* at 3.

24

25 ⁴ L&W has not produced the vast majority of the documents identified in its November 6
 26 supplemental accounting, and has in fact not produced any new documents since September 15,
 27 2024.

28 ⁵ Although L&W’s counsel asserted that “L&W’s search consisted of more than just the [REDACTED]
 29 [REDACTED] discussed here,” L&W failed to explain what else it did to
 identify non-Dragon Train documents. Swanson Decl. Ex. F at 1.

ARGUMENT

“A district court has the inherent power to enforce its orders through civil contempt.” *Desirous Parties Unlimited Inc. v. Right Connection Inc.*, 2022 WL 17417857, at *2 (D. Nev. Dec. 5, 2022), *aff’d*, 2023 WL 4285504 (9th Cir. June 30, 2023) (citing *Shillitani v. United States*, 384 U.S. 364, 370 (1966)). “A finding of civil contempt is proper when a party disobeys a specific and definite court order by failing to take all reasonable steps within his or her power to comply.” *United States v. Modina*, 2016 WL 635028, at *3 (D. Nev. Feb. 3, 2016) (citing *Go-Video, Inc. v. Motion Picture Ass’n of America*, 10 F.3d 693, 695 (9th Cir. 1993)). “The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court. The burden then shifts to the contemnors to demonstrate why they were unable to comply.” *In re Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002) (citing *F.T.C. v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999)).

L&W failed to take all reasonable steps within its power to comply with the Order in at least two ways. *First*, L&W improperly focused its compliance efforts on Dragon Train documents and disclosures, even though discovery has already revealed that the trade secret misappropriation at issue was more widespread, and did not take reasonable steps to investigate the extent to which L&W personnel may have accessed, disclosed, or used Plaintiffs' Trade Secrets in other contexts. *Second*, L&W improperly relied on its overbroad document accounting to serve as an accounting of disclosures, making it infeasible for Aristocrat to determine the true extent to which Plaintiffs' Trade Secrets have been disclosed by L&W.

I. L&W Improperly Focused Its Compliance Efforts on Dragon Train Documents.

The Court’s Order required L&W to “[s]earch for and identify all documents and materials in its possession, custody, or control reflecting Plaintiffs’ Trade Secrets,” to “describe[] with specificity every document identified in its search,” to “[i]solated all documents and materials identified in its search,” and to “describe[] with specificity every instance in which L&W has disclosed Plaintiffs’ Trade Secrets.” ECF No. 125 at 20–21. These requirements are critical to ensure that L&W ceases all use and disclosure of Plaintiffs’ Trade Secrets during the pendency of this case, to understand the extent of L&W’s misappropriation, and to mitigate the risk of further

1 irreparable harm to Aristocrat. As the Order makes clear, “Plaintiffs’ Trade Secrets” are not limited
 2 to documents that concern Dragon Train or that explicitly refer to Dragon Link, Lightning Link,
 3 or Golden Century, but rather encompass the trade secrets “described in this Order” and “other
 4 confidential and proprietary information relating to the mathematical design of Dragon Link and
 5 Lightning Link” regardless of the form in which that information appears. ECF No. 125 at 20.
 6 L&W’s search efforts, however, have singularly focused on Dragon Train documents and on
 7 explicit mentions of Dragon Link, Lightning Link, and Golden Century. That does not comply
 8 with either the letter or the spirit of the Order.

9 As an initial matter, L&W does not appear to dispute that the Order required L&W to
 10 search for documents and disclosures outside the context of Dragon Train. Nor could it, given that
 11 L&W’s use and disclosure of Plaintiffs’ Trade Secrets has extended beyond Dragon Train. In the
 12 Order, the Court cited evidence that Ms. Charles shared information constituting Plaintiffs’ Trade
 13 Secrets with other L&W employees outside of the context of Dragon Train development. *See* ECF
 14 No. 125 at 11–12; ECF No. 52-2 at Appx. 199, 217. L&W has also produced other documents that
 15 may evidence dissemination of Plaintiffs’ Trade Secrets outside the context of Dragon Train,
 16 including, for example, [REDACTED]
 17 [REDACTED]
 18 [REDACTED] *See* Swanson Decl. Ex. N (LNU_025606) at 1, 3.⁶

19 In addition, the sheer volume of L&W’s accounting shows that information relating to
 20 Dragon Train—and thus potentially reflecting Plaintiffs’ Trade Secrets—was widely disseminated
 21 throughout L&W before the preliminary injunction took effect. This is consistent with the common
 22 industry practice of re-using the math underlying a successful game like Dragon Train and
 23 underscores the significant risk that L&W further disseminated and used Plaintiffs’ Trade Secrets
 24

25
 26 ⁶ L&W’s October 23 accounting of documents included [REDACTED]
 27 [REDACTED] Although L&W’s counsel has suggested these files may have been included [REDACTED] Ex. F at 2, this underscores
 28 L&W’s haphazard approach to the accountings, and it confirms the need for further investigation
 into the scope of the misappropriation.

1 in the wake of Dragon Train's success. *See also* ECF No. 52-1 at Appx. 7 (¶ 17), Appx. 10–11
2 (¶ 30–33).

3 L&W's use of only three search terms—Dragon Link, Lightning Link, and Golden
4 Century—to identify non-Dragon Train documents is patently insufficient. As the evidence
5 submitted in connection with Aristocrat's preliminary injunction motion demonstrates,
6 information constituting Plaintiffs' Trade Secrets can be used or disclosed without any explicit
7 reference to the names of specific games. *See, e.g.*, ECF No. 80 at Appx. 58, 60–63
8 (ARIST_00006909 and ARIST_00004279, both calculation files for Dragon Link Golden
9 Century, contain no explicit references to Dragon Link, Lightning Link, or Golden Century). The
10 trade secrets at issue include mathematical information, such as weightings and probabilities, that
11 can be copied without the use of labels like "Dragon Link"—which is exactly what Ms. Charles
12 did in her work for L&W. *See* ECF No. 125 at 14 (describing similarities between the Dragon Link
13 spreadsheet and the "Inception Conception" spreadsheet). Although the briefing on the preliminary
14 injunction motion provided numerous examples of specific Aristocrat math information that L&W
15 had copied or otherwise used, L&W apparently made no effort to search for such information in
16 preparing its accountings.

17 Even as to game names, L&W's decision to limit its search to Dragon Link, Lightning
18 Link, and Golden Century was not reasonable because Dragon Link and Lightning Link are game
19 families that each encompass multiple titles with a similar underlying mathematical design. *See*
20 ECF No. 52-1 at Appx. 133–34 (¶ 31–33). Indeed, L&W's own accounting of documents contains
21 references to other titles besides Golden Century. *See, e.g.*, Swanson Decl. Ex. E (excerpts of
22 LNW_033224 at rows 23896 ([REDACTED]), 23898 ([REDACTED]), and 23899 ([REDACTED]
23 [REDACTED])). Moreover, the limited discovery L&W provided prior to the grant of the preliminary
24 injunction indicated that L&W uses abbreviations (e.g., "DL" and "LL") to refer to these games.
25 *See, e.g.*, Swanson Decl. Ex. O (LNW_014038) at 1 (referring to [REDACTED]
26 Nonetheless, L&W did not include these abbreviations in its searches, even though [REDACTED]
27 [REDACTED]
28

1 L&W's canvassing of employees does not cure its inadequate searches. As explained, that
2 canvassing was implemented via [REDACTED] that was facially deficient. [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 [REDACTED] Accordingly, this [REDACTED] would not have identified which
7 of these employees possessed or had used or disclosed information constituting Plaintiffs' Trade
8 Secrets in other forms. Swanson Decl. Ex. B at 2–3.

9 L&W's failure to conduct a reasonable search for instances of use or disclosure beyond
10 Dragon Train is particularly troubling given that none of the witnesses who submitted declarations
11 pursuant to the Order purported to represent that L&W's misappropriation was limited to Dragon
12 Train. Nor could any such representation be credited given that L&W has known of Aristocrat's
13 concerns of misappropriation since at least *September 2023*, ECF No. 52-2 at Appx. 223–74, yet
14 repeatedly failed to identify or acknowledge the significant evidence of misappropriation in
15 L&W's own files until the preliminary injunction took effect. For example, L&W previously
16 represented that:

- 17 • “L&W extensively searched both its electronic files and those of
18 [Ms. Charles and Lloyd Sefton] in advance of a parallel proceeding in
Australia . . . and did not locate any Aristocrat confidential documents or
information,” ECF No. 19;
- 20 • “L&W has confirmed that [documents produced in the Australian
proceeding, including worksheets evidencing misappropriation] were
21 generated independently by L&W's employees and that they do not contain
any Aristocrat confidential information,” ECF No. 52-2 at Appx. 298–99;
22 and
- 23 • “It is abundantly clear that L&W has not received, accessed or misused any
24 [confidential] Aristocrat documents,” ECF No. 90 at Appx. 94–100.

25 L&W has also repeatedly—and incorrectly—represented to this Court that Aristocrat's
26 claims were “baseless,” and that L&W had “independently developed” Dragon Train without using
27 any Aristocrat information. *E.g.*, ECF No. 19 at 5, 7; ECF No. 34 at 2; ECF No. 41 at 11; ECF No.
28 77 at 1, 4, 5, 7; ECF No. 85 at 1. In addition, just days before the hearing on Aristocrat's

1 preliminary injunction motion—and notwithstanding the extensive evidence of misappropriation
2 included in Aristocrat’s briefing—L&W served responses to requests for admission repeatedly
3 denying that L&W or Ms. Charles had Aristocrat documents, or documents adapted or derived
4 from Aristocrat documents, within their possession, custody, or control; that information from
5 Aristocrat documents was used to develop Dragon Train; and that Ms. Charles disclosed such
6 information to other employees at L&W. *See* Swanson Decl. Ex. P at 4–10. These denials—which
7 L&W still has not corrected—raise significant doubt about the sufficiency of L&W’s diligence
8 efforts prior to making representations to the Court and to Aristocrat. All the while, L&W
9 continued to aggressively commercialize Dragon Train—including propagating the game to other
10 jurisdictions and online—thereby perpetuating and compounding the significant risk that
11 Aristocrat’s trade secrets would be widely disseminated throughout the company. *See* ECF No. 77
12 at 5–6.

13 Against this backdrop, L&W cannot simply assume—and has given Aristocrat and the
14 Court no reason to believe—that its misappropriation was confined to (a) Dragon Train and (b) the
15 three disclosures by Ms. Charles that were discussed in the preliminary injunction briefing. Given
16 the significant risk that Aristocrat’s trade secrets have been disseminated more broadly within the
17 company and could potentially be used to develop other games, L&W’s unilateral decision to limit
18 its searches to Dragon Train-related terms and explicit references to Dragon Link, Lightning Link,
19 and Golden Century falls well short of “tak[ing] all reasonable steps within [its] power to comply”
20 with the Order. *See Modina*, 2016 WL 635028, at *3. Nor does the time and expense that L&W
21 expended on the searches excuse L&W’s materially flawed approach—particularly where that
22 time and expense is the direct result of its decision to move full steam ahead with Dragon Train in
23 the face of this trade secret dispute.

24 The Court should (again) order L&W to “search for and identify all documents and
25 materials in its possession, custody, or control reflecting Plaintiffs’ Trade Secrets,” to describe and
26 isolate those documents, and to “describe[] with specificity every instance in which L&W has
27 disclosed Plaintiffs’ Trade Secrets,” whether or not those documents, materials, and disclosures
28

1 relate to Dragon Train or explicitly mention Dragon Link, Lightning Link, or Golden Century. *See*
2 ECF No. 125 at 20.

3 **II. L&W Failed to Identify Disclosures of Plaintiffs' Trade Secrets with Specificity.**

4 L&W's accounting of disclosures of Aristocrat's trade secrets is inadequate for an
5 additional reason. Although L&W's accounting of documents now contains [REDACTED]
6 of entries, suggesting widespread dissemination of those trade secrets throughout the company, its
7 accounting of disclosures identified only [REDACTED]
8 [REDACTED]

9 [REDACTED] and two entries for known instances, previously
10 revealed through discovery in this case, where Ms. Charles shared Dragon Link game math in
11 writing with other L&W employees. *See* Swanson Decl. Ex. D (LNW_029459). Given the
12 widespread dissemination of Dragon Train information, not to mention other documents that may
13 reflect Aristocrat's trade secrets but were not detected in L&W's searches, it is not plausible that
14 [REDACTED] accounts for "every instance in which L&W has disclosed
15 Plaintiffs' Trade Secrets," as required by the Order. *See* ECF No. 125 at 21. For example, it is
16 simply not credible to suggest that, despite the math files being available on [REDACTED]
17 [REDACTED], not a single L&W employee actually accessed those files [REDACTED]. Yet
18 L&W's accounting of disclosures does not identify each instance in which the files were accessed
19 [REDACTED], as required by the Order.

20 L&W cannot excuse its anemic accounting of disclosures with a generic statement
21 incorporating by reference the [REDACTED] of entries that make up its accounting of
22 documents. The Order required L&W to provide these two accountings as separate and distinct
23 obligations. *Id.* at 20–21. The Order also required L&W to describe instances of disclosure "with
24 specificity," including by describing the "specific information disclosed" and "reason for
25 disclosure"—two fields not included in L&W's accounting of documents. *See id.* There is good
26 reason for these requirements: It is imperative for Aristocrat to understand the extent of L&W's
27 misappropriation and with whom Plaintiffs' Trade Secrets may have been shared, so that Aristocrat
28 can take additional steps to prevent irreparable harm while this case is pending. For example, if

1 the trade secrets were shared with someone in another L&W game studio (*i.e.*, outside of Ms.
 2 Charles's game studio), it would be necessary to investigate any use of the trade secrets by that
 3 game studio to develop games, including games that may currently be on the market.

4 Aristocrat should not have to parse through [REDACTED] of entries in L&W's
 5 document accounting, which may or may not actually reflect Plaintiffs' Trade Secrets, to deduce
 6 that information. L&W should be required to comply with the Order and provide an accounting
 7 that "describes with specificity every instance in which L&W has disclosed Plaintiffs' Trade
 8 Secrets, including the (i) name of the person or entity to which the information was disclosed,
 9 (ii) date of disclosure, (iii) specific information disclosed, (iv) reason for disclosure, and (v) all
 10 documents or materials reflecting the disclosure." ECF No. 125 at 21.

11 **III. L&W Should Be Required to Pay Aristocrat's Reasonable Fees and Costs.**

12 In addition to the other relief requested herein, Aristocrat respectfully requests that L&W
 13 be ordered to pay Aristocrat's reasonable fees and costs incurred in attempting to enforce
 14 compliance with the Order, including by bringing the instant motion. *See, e.g., Shell Offshore Inc.*
 15 *v. Greenpeace, Inc.*, 815 F.3d 623, 629 (9th Cir. 2016) ("A court may wield its civil contempt
 16 powers for two separate and independent purposes: (1) to coerce the defendant into compliance
 17 with the court's order; and (2) to compensate the complainant for losses sustained.") (citing *United*
 18 *States v. United Mine Workers of Am.*, 330 U.S. 258, 303–04 (1947)); *Desirous*, 2022 WL
 19 17417857, at *5 (finding that awards of attorney's fees are appropriate in situations of civil
 20 contempt) (quoting *Harcourt Brace Jovanovich Legal & Pro. Publ'ns, Inc. v. Multistate Legal*
 21 *Stud., Inc.*, 26 F.3d 948, 953 (9th Cir. 1994)). Aristocrat is prepared to submit an accounting of
 22 such fees and costs within ten days of the Court's order.

23 **CONCLUSION**

24 For the foregoing reasons, Aristocrat respectfully requests that the Court enforce the
 25 preliminary injunction and issue a further order requiring L&W to (1) fully comply with the terms
 26 of the Order, including by conducting a reasonable search for Plaintiffs' Trade Secrets in any form;
 27 (2) provide amended or supplemental accountings that describe with specificity the results of that
 28 search, including the specific information required by the Order; and (3) file an updated

certification of compliance within 14 days of the Court's further order. The Court also should award Aristocrat its reasonable fees and costs incurred in connection with enforcing compliance with the Order.

Dated: November 21, 2024

/s/ Jason D. Smith

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 21st day of November 2024, a true and correct copy of the
3 foregoing **PLAINTIFFS' MOTION TO ENFORCE PRELIMINARY INJUNCTION (FILED**
4 **UNDER SEAL)** was served electronically via electronic mail to the addresses of the listed counsel
5 below. In addition, pursuant to LR IA 10-5(d) and LR IC 4-1(c), a courtesy copy was sent via U.S.
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34
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